BRANDRETH'S TREATISE

ON THE

LAW OF ADOPTION

IN

RAJPOOTANA.

[*With Notes by Colonel J. C. Brooke.*]

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INTRODUCTION.

No. 425G., dated 11th April 1870.

From—Lieutenant-Colonel R. H. Keatinge, C.S.I., V.C., Agent to the Governor-General for Rajpootana.

To—C. U. Aitchison, Esq., Officiating Secretary to the Government of India, Foreign Department, with the G.-G.

In 1846 the Hon'ble Mr. Thomason proposed to Mr. Brandreth, C.S., who then held the post of Assistant to the Superintendent of Ajmere, that he should write a Treatise on the Law of Adoption in the Rajpoot States.

The work was completed in 1848 and is on record in my Office, with remarks in the Hon'ble Mr. Thomason's handwriting regarding its accuracy.

2. The paper has from time to time proved of great assistance to my predecessors and myself, and was specially quoted by Sir Henry Lawrence in the Kerowlee succession case of 1853.

Believing the paper to be of considerable value, I was anxious to have it printed for general use in the Agency, but refrained from doing so in consequence of the doubt expressed by the Lieutenant-Governor as to its correctness on some points.

3. It then occurred to me to ask Colonel Brooke to review the subject. My views will be found expressed in a memorandum dated 18th August 1869, which, with Colonel Brooke's reply dated 1st instant, are appended.

4. I now write to request that Mr. Brandreth's paper with Colonel Brooke's notes on it may be published in some convenient form for use in the Political Department. The Rajpoots throughout India look more or less to the customs of the great States under this Agency for their guidance in domestic occurrences, and quote them to their own officers as suits them best. The publication will in consequence be of use in almost every Political Agency in the country; and in Rajpootana Proper it will convey at once to young officers joining the department information which they would otherwise require several years to obtain.

No. 1289P., dated 22nd July 1870.

From—C. U. AITCHISON, Esq., Officiating Secretary to the Government of India, Foreign Department, with the G.-G.

To—COLONEL J. C. BROOKE, Officiating Agent to the Governor-General for Rajpootana.

WITH reference to Colonel Keatinge's letter No. 425G., dated 11th April 1870, I am directed by the Viceroy and Governor-General in Council to inform you that, as therein suggested, Mr. Brandreth's Treatise on the Law of Adoption in the Rajpoot States with your notes on the same will be printed and circulated to the Political Officers under this department, under the clear understanding that the treatise is to be regarded as no more than an interesting and valuable contribution to the literature of the adoption question, and not as an authoritative guide.

2. For your own addition to the Treatise in the form of corrective notes I am to convey the thanks of His Excellency the Viceroy.

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CHAPTER I.

The Law of Adoption.

It must be observed that there are certain differences in the law * as well of adoption as of other practices between the four principal castes. These differences are less marked between the three first classes; between them and the fourth there is a wide breach; but as this compendium of the law is meant to apply to the Rajpoots, I shall not dwell much on those differences, but collect all that I can which is strictly applicable to the people whose customs I propose to illustrate. No part of the Hindoo Law is more complicated than that relating to adoption; in no other part are so many discrepancies to be observed as in the views of the various writers who have treated of this subject. By a reference to existing practices, and by consulting only such books as were considered of authority in that part of the country for which they wrote, Sir William Macnaghten and other Europeans, who have written on the subject, have been able to deduce a tolerably consistent view of it; but had they, neglecting such cases of every-day occurrence as came under their observation, consulted without distinction the mass of books which have been compiled on the subject, they would have been altogether unable to produce a treatise on the law applicable to the decision of cases, so full would it have been of discrepancies on almost every point that could be adduced. In treating of the law prevalent in Rajpootana, I have not been able to meet with any book which can be considered applicable to this part of the country, and which is consulted in preference to any other. The Mahrattas have the *Vyuvahara Myookh*, the people of Bengal the *Duttuk Chundrica*, and those of Benares

* Different parts of India have different written laws on the custom of adoption prevailing therein, whilst in Rajpootana there is no written law. The Maharana of Oodeypore, in reply to queries on the subject, said that Rajpoots are guided in cases of adoption by the "Dhurm Shasters" and ancient custom. This is a vague statement, since custom is ever varying, and the Dhurm Shasters have been so modified by it, that little remains in them which has not been changed. It would be more correct to define the laws of adoption prevailing in Rajpootana as founded on the Dhurm Shasters, but moulded by tradition and expediency into an unwritten and uncertain custom. Men, like the late Mr. Thomason, learned in the written law, have been startled by the interpretations put on it by Rajpoots, and by the expedients and arguments adopted by them, to make their own decisions coincide with it. Hence in trying to reduce it to a written form exceptions and

the *Duttuk Mimausa*; but the people of Rajwarra have no book of their own, and the imperfect account I have given of the law will be found, I am afraid, rather to exhibit matter for contrast than to elucidate the customs at present prevalent in Rajwarra. This account has been drawn from the decisions of the Sudder Dewanny Adawlut, from *Menu*, from the *Mitakshera*, and such other books as are usually considered of the highest authority on the subject. In my account of the practice of adoption I shall follow the same order as that adopted in treating of the law by which comparison between the two may be facilitated.

Different kinds of sons. *Menu*, IX., 159-160.

2. There are twelve kinds of sons mentioned in *Menu*. The son begotten by a man in lawful wedlock; the son of his wife begotten by another in consequence of his imbecility; a son given to him by his parents; a son made or adopted; a son whose real father cannot be known, born to his wife during his long absence from home; a son rejected by his natural parents and adopted by him: these six inherit collaterally as well as lineally.

Sons inheriting lineally only.

3. The son of a woman previous to her marriage; a son born to a woman too short a time after her marriage to have been legitimately begotten; a son bought; a son of a woman who has contracted a second marriage; a son self-given and accepted out of compassion, whether his parents be dead or whether he has been rejected by them; and a son by a woman of the Súdrá caste: these six inherit only lineally.

Restriction of filiation. Note to Translation of *Menu* by Sir William Jones.

4. These kinds of sons are particularized because the existence of some of them may still be traced, though they are not recognized under a different name. According to Sir William Jones, in the present age the filiation of any but a son legally begotten or given in adoption by his parents is prohibited; the most learned among the Hindoos being of opinion that many of the laws of *Menu* are only applicable to the first three ages of the world. With reference to this it is stated in the *Duttuk Chundrica*—"Sons of many descriptions, who were made by the ancient saints, cannot now be adopted by men by reason of their deficiency of power, and with regard to the adoption, as sons of those other than the legitimate son and the son given, it is subjoined. This rule sages pronounce to be avoided in the Kuli age."

Object of Adoption. *Menu*, IX., 138. *Menu*, IX., 169. Sruti-tee, quoted in the *Ketnalara*.

5. The object of adoption is evinced by the derivation of the Sanscrit word "puttra," a son, because "tráyaté" he delivers "put" from hell, and for this purpose the son is required to be "acquainted with the merit of performing obsequies, and with the sin of omitting them." A further object in adoption is, that the celebrity of the adopter's name may be maintained.

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anomalies crop up at each step we take, which cannot be reconciled with what is followed elsewhere, or with what is supposed to be the law in Rajpootana itself. We may note to-day what we regard as a standard to be followed, but to-morrow a case will arise which will upset all our calculations. Mr. Thomason regarded Mr. Brandreth's essay as disappointing, because his enquiries did not lead him to an invariable law. This, indeed, was not in Mr. Brandreth's power, but that gentleman has described very accurately the custom of adoption now prevailing in Rajpootana. He fails rarely, if ever, in describing the customs of adoption, but sometimes does so in the examples given to elucidate them, which is pardonable, when it is considered that he was resident at Ajmere and not at any of the Courts, where he might have had access to accurate information.

Qualification of the adopter.

Duttuk Mimausa, Section I., 13, of the blind, lame, &c.

Mr. Sutherland's Synopsis, page 212.

6. The qualification to adopt rests upon the persons being destitute of male issue, including son, son's son, and son's grandson, "and it may be inferred," says Mr. Sutherland, "that if such male issue, though existing, were disqualified by any legal impediment, such as loss of caste, from performing the exequial rites, the affiliation of a son might legally take place." "A doubt might be entertained," he continues, "as to the validity of an adoption by one not being in the order of the *Grihi* (the householder or married man), or by a blind, impotent, or other person disqualified from inheriting. The more correct opinion, however, appears to be that an adoption by any of the persons described would be valid, though it seems reasonable that an affiliation by one excluded from inheritance* should confer no right of succession on the adopted, of which the adopter is debarred by law."

Necessity of adoption in order to inheritance.

Menu, IX., 182.

7. There is a passage in *Menu* in which it is stated that "if among several brothers of the whole blood one have a son born, all of them are pronounced fathers of a male child;" but as there is no authority for supposing that a son so situated has any right of inheritance conferred upon him, and that his adoption would, consequently, be unnecessary, this passage can only be considered as related to spiritual benefits, which are in this case secured without the necessity of adoption.

Right of the husband.

Duttuk Mimausa, I., 22.

8. The right of adoption is absolute in the husband; no objection on the part of the wife would be valid, though adoption having taken place, the adopted becomes son to both, and is capable of performing the funeral rites of both.

Adoption by women.

Duttuk Mimausa, Section I., 16.

Sudder Dewanny Reports, Vol. III., 387, & Vol. II., 168.

Vyuvahara Myookh, Chapter on Daya Bhagh.

9. A woman may adopt, having obtained the consent of her husband, after his death, though this has been questioned in the *Duttuk Mimausa*; all other authorities, however, allow it. The consent of relations alone does not render the adoption valid according to the *Duttuk Chundrica* and *Duttuk Mimausa*, and this rule has also been recognized by the Sudder Dewanny Adawlut: but according to the *Vyuvahara Myookh*, the sanction of the husband is not requisite; the consent of the husband's relations alone is sufficient. The selection, however, must be made from the *Sapinda*, that is, of a person descended from a common father within four generations, though this restriction does not hold in the case of Rajpoots where the adoption takes place with the husband's consent.† It is applicable to Brahmins under all circumstances.

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* The affiliation by one excluded from inheritance would not debar the right of succession to the adopted. A man may be excluded from inheritance to a throne by lameness or some such physical defect, but the right of succession would hold good in the case of his legitimate or adopted son.

† In Rajpootana it is not absolutely necessary that the husband should have made his wishes known before his death. An adoption by the widow is valid so long as she has the consent of her husband's relatives, &c. An adoption by a man during his life gives him an extended choice. If he has left written instructions, or given verbal ones before his death to his widow, regarding the person he wishes to adopt, his wishes are respected by his relatives, and the adoption carried out so long as there is no glaring injustice done. The choice may in this case be said to be rather more restricted than if the adoption had been made during life-time, but yet sufficiently extended. If the husband's wishes before his death are not known, then the widow, with the consent of his relations, adopts the one who is

Obedience of wives.

Tajuvulkya Mitakshera, Chapter II., 27.

10. Great stress is laid in all the books of the Hindoos in the obedience that a wife owes to her husband. By Yajuvulkya it is said, "submission to the commands of her lord is the highest duty of a woman," and *Menu* is full of passages enforcing this submission. Hence we may conclude that a husband's orders are sufficient to warrant the wife's acting upon them in all cases where they are not actually opposed to the law, and on such grounds the reasonableness of the decisions of the Sudder Dewanny Adawlut in the following cases, for which there is no express legal authority, may be maintained:—

Two successive adoptions by widows of same man.

Sudder Dewanny Reports, I., 209.

11. In* the case of Sham Chunder and family *versus* Naragni Debeh and family, from which this principle was deduced, that there may be two successive adoptions under due authority for that purpose by the widows of the same man.

Adoption by wife during husband's lifetime.

Sudder Dewanny Reports, I., 324.

12. In the case of Solukna *versus* Ramdo Loll Pande and family, it was decided that authority to a wife to adopt in the event of a disagreement between her and a son of the husband then living will not avail, though authority to adopt in the event of that son's death would be valid.

Separate adoption by two wives.

Sudder Dewanny Reports, II., 136.

13. In the case of Gowreepershad Race *versus* Jymala, a childless Hindoo having two wives gave to each of them permission to adopt a son. After having himself adopted a son on behalf of his senior wife, he confirmed the permission originally given to his second wife. The son adopted by her, after her husband's death, was, by the decision of the Court, allowed to take the inheritance jointly with the son adopted by the husband on behalf of his senior wife.

Preference of a near relation.

14. All writers on law, Vusishta, Sonuka, &c., admit that a preference should be given to a brother's son, or, failing him, to the nearest relation. The author of the *Duttuk Mimansa* goes to the extent of saying that the existence of a brother's son or near relation would invalidate the adoption of one more distantly connected† this opinion, however, is not promulgated by other writers, and cannot be received as a general rule.

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most suitable. The choice in this case may be said to be still more restricted, though no formal bounds of consanguinity, such as *Sapinda*, are set to it. In Goozerat a widow is not allowed to adopt, but the next-of-kin would succeed by right of propinquity. But adoption is not always necessary to succession. In cases where the "zenanah" influence has been opposed to that of the family and Chiefs, the succession has taken place in spite of it, as in the case of Maharana Sirdar Singh of Oodeypore, called to the throne by the Chiefs and household in opposition to the zenanah's influence, which was exerted in favour of Sadool Singh, the son of his younger brother. Maha Rawul Bahadoor Singh of Banswarra was also chosen by the Chiefs in preference to the Khandoo Maharaj, the next-of-kin, who was supported by the "zenanah."

* In the cases quoted from the Sudder Dewanny Reports, I., 209, and I., 324, the decisions given are according to Rajpoot custom. Such a case as that mentioned in the Reports, II., 136, could not occur in Rajpootana.

† So long as a brother's son is alive, no distant relative could be adopted in Rajpootana. A brother's son is regarded as almost equal in relationship to a man's own son, and could not be passed over. The only exception to this rule would be in the case of mental or physical infirmity barring succession to a throne, but it is doubtful whether succession to a lesser estate would be barred by such infirmities, supposing there were no other brother's sons who could succeed, and that a more distant relation had to be chosen. Much would depend upon the influence of parties and other points, so that each case would have to be settled according to the peculiar circumstances affecting it at the time, and hence no decided rule can be laid down.

15. An only or eldest son * must not be given in adoption; the adopted party must also be of the same tribe, "Jat," as his adoptive father, and he must not be the son of one whom the adopter could not have married, such as a sister's son,† or a daughter's son. A brother also and an uncle ‡ are excluded as not bearing resemblance to a son, nor can a son § be at any time adopted by two men, it being argued from the words of *Menu*, "by a man destitute of a son," that "from the singular number there used, it follows that the same son must not be adopted by two or more persons."

Party adopted. *Yajuvulkya*, Chapter 124. *Menu*, IX., 168. *Duttuk Mimausa*, V., 16. *Duttuk Chundrica*, II., 8.

16. Writers on law are not agreed about the age of the adopted party.|| According to the *Myookh*, a work much esteemed among the Mahrattas, there is no restriction as to age; when a relative or *Sagotra* is to be adopted, and no impediment on account of marriage, investiture, or tonsure, the restriction as to age only relates to cases where no relationship subsists. Though a man may have a family of his own, he is still nevertheless capable of being adopted, provided there be "no objector," by which we are probably to understand one who has a son of the proper age more nearly related to the adopter whom he wishes to be taken in adoption. The *Duttuk Chundrica*, the authority mostly followed in Bengal, requires that the ceremony of investiture with the sacred thread should take place in the family of the adoptive father. The *Duttuk Mimausa*, the work most respected at Benares, prescribes the period of five years within which the adoption must take place, and the ceremony of tonsure, which precedes that of investiture, is required to be observed in the adopter's family; but should the ceremony of tonsure have taken place in his own

Age of the adopted. *Vyuvahara Myookh*, Chapter on Daya Bhagh.

Duttuk Chundrica, II., 20-23. *Duttuk Mimausa*, IV., 20-33.

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* There is no restriction against an eldest son being given in adoption in Rajpootana. It is not usual to do so, and it is against Hindoo Law, but it is sometimes done when it is to the advantage of the adopted and his family, as in the case of adoption to a higher fief. It may sometimes happen that the choice of a Thakoor during his life-time may be fixed on an eldest son, and his mind set against adopting any other of the family. The eldest son could then be taken, and the second son succeed to the lesser estate. Bhuboot Singh, the eldest son and heir of the Beyd Thakoor in Marwar, was adopted into Lameea. His adoptive grandfather, Bhan Singh, heir of Beyd, had also been adopted into Lameea in the same manner. The eldest son of the Neembheera Thakoor in Marwar was adopted into the superior fief of Puluasnee.

† A sister's son or daughter's son is not reckoned of the family at all. The sister or daughter has been given to the family she is married into, and is lost for ever to the one in which she was born, and which, on her marriage, she leaves with weeping and mourning, as if she were going to her grave; so complete is the severance from her father's house.

‡ A brother can be adopted and succeed in Rajpootana; instances of this are numerous. An own uncle cannot be adopted, nor can he succeed, being regarded almost in the light of a father. When he is separated by several removes, then an uncle may be adopted.

§ A son can be adopted to two places in succession, provided his first adoptive father be dead. The custom may not be common, because such cases would not often arise, but there is no objection to it. Maharaja Tukht Singh of Marwar was the second son of Thakoor Kurrun Singh of Morassa in the Mahee Kanta. His elder brother, Pirthee Singh, was adopted into Ahmednuggur, and on his death without issue his widow adopted her husband's brother, Tukht Singh, who was again adopted into Marwar. Whilst his first adoptive father is alive, a son cannot be adopted by a second father; and we must read the rule in this manner.

|| There is no restriction as to the age of the adopted in Rajpootana; though the custom is, that when the members of the branch of the family from which the adoption is made are not known, by reason of the distance of their relationship, it is usual in such cases to adopt a boy. Hence also, as there are no restrictions as to age, the ceremonies of tonsure, &c., take place in whatever position the adopted may be at the time they become requisite.

father's family, and the child be under six years of age, he may be adopted in the Duyamooshayuna form after performance of the sacrifice *Putreshti.*

Qualification to give in adoption.

Menu, IX., 168.

17. The right of the person to give in adoption may be collected from the following text of *Menu*:—"He whom his father or mother gives to another as his son, &c., provided that the donee have no issue." The author of the *Vyuvahara Myookh*, a work which is certainly the most consonant with the customs observed in Rajpootana of any that I have seen, in commenting on this text, remarks that the father and mother, if both alive, ought to unite in giving their son, or on the decease of one, the other is at liberty to give him. In the above translation of the text in Menu, which is interpreted as I have given it by the *Vyuvahara Myookh*, I have left out the words "with her husband's consent," which are given in italics in Sir William Jones's translation: the passage there interpreted stands thus:—"He whom his father or mother with her husband's consent gives to another as his son, &c.;" and this is the interpretation put upon it in the *Duttuk Mimausa* and *Duttuk Chundrica*, which has also been recognized by the Sudder Dewanny Adawlut, by which it was decided that where the son has been given in adoption by a widow, without having obtained the consent of her husband, or where he has not been delivered over by either of his parents, but only by his brother, the adoption is invalid.

Sudder Dewanny Reports, Vol. III., 387, Vol. II., 109.

Duyamooshayuna form of adoption.

Duttuk Mimausa, VI., 414.

Duttuk Chundrica, II., 36.

18. Besides the above rules, which apply to the case of the Duttuk only, there is another species of adoption, in which the adopted son retains the filial relation to his natural father,* and is called a Duyamooshayuna, or son of two fathers. The son may be adopted by a special agreement between his natural and adoptive parents at the time of his adoption, in which case he is called "Nitya Duyamooshayuna," or otherwise without such agreement, and after the ceremony of tonsure has been performed in his natural family, in which case he is called "Anitya Duyamooshayuna." In this latter case the adopted son maintains his relation to the family of his adoptive father only during his own life-time; the relation is not continued in that of his sons, who revert to their natural family. With regard to inheritance, the Duyamooshayuna takes half a share with legitimate children subsequently born.

Duttuk Mimausa, VI., 41-42.

Duttuk Chundrica, IV., 33.

Form of adoption.

Vyuvahara Myookh, Daya Bhagh.

19. The adopted son must be initiated with the prescribed forms and ceremonies. The mode of adoption, the different ceremonies and offerings to be observed, are laid down at great length in the *Duttuk Chundrica* and *Duttuk Mimausa* and other works on the subject. The following is a translation of part of the Daya Bhagh of the Vyuv-Myvish relating to the forms necessary to be observed:—"I proceed to detail the manner of adopting a son as related by *Sounaka*. He who has no son, and is desirous of adopting one, must fast the day before, and must present clothes, a turban, earrings, and a finger-ring to a virtuous Acharj who is skilled in the Vedas and a follower of Vishnu; and having called the Acharj and other Brah-

* No such form of adoption is known in Rajwarra.

mins, and also all his own relations, he must make a feast, after which, having gone to the father of the son whom he is desirous of receiving in adoption, he must address him in these words: 'Give me thy son,' and the giver, if he is a qualified person, after repeating the five Muntras, commencing with 'ye yajnena,' must give his son, and the receiver, repeating the Muntras, Devusyutun, &c., and taking him in both his hands, must embrace him, and then, having clothed him with fine clothes and ornaments and ordered dancing, singing, and musical instruments, and the reading of the Suristeetbichun, with these accompaniments having taken his son, he must enter his own house, and there he must have the sacrifice of the Churoohove performed with the usual ceremonies; and after the repetition of the Muntras Yustwahrida and toobha mugrita, and the five Muntras Somodat, &c., the sacrifice must be ended." Such of the ceremonies as require the repetition of the Muntras cannot be performed by the females, as they are on a par with Súdrás, to whom the hearing and reading of the Vedas are forbidden. The Muntras must be repeated by Brahmins in their absence.

Daya Bhagh of *Vyuvahara Mayookh.*

20. Though * much is said in books of law on the subject of the rites and ceremonies to be observed in adoption, it does not appear that any of these are essential, and that the non-observance of any or all would invalidate the adoption. It is sufficient that the son is given and received, and that this is satisfactorily proved. Most of the forms prescribed, particularly that of giving notice to the Raja and sending invitations to kinsfolk, appear rather to give publicity and notoriety to the event than to be any essential part of the adoption.

Rites and ceremonies not necessary to validity of adoption.

Menu, IX., 168.

Mr. Sutherland's Synopsis, page 218.

A case in point was decided by the Sudder Dewanny Adawlut (Kulyan Singh *versus* Kirpa Singh and Bhola Singh), where it was determined that the adoption was valid, though no religious rites or ceremonies had been observed.

21. The adoption once completed, the adopted son loses all claim to inheritance in the family of his natural father, and is not responsible for his debts, and is prohibited from performing his funeral rites: he ceases to have all connexion with his natural family, except in the case of marriage, with regard to which the prohibited degrees continue in full force. The adopted son succeeds to the property of his adoptive father collaterally as well as lineally; but it has been determined by the Dewanny Adawlut that he has no claim to the property of his mother's relations, the reason of which is that the party adopted becomes the son of a person whose lineage is distinct from that of the paternal grandfather.

Effects of adoption.

Duttuk Mimausa, VI., 6-7.
Duttuk Chundrica, II., 18-19.
Duttuk Mimausa, VI., 10 and 47.
Menu, IX., 159.
Duttuk Chundrica, IV., 2.
Dewanny Adawlut Reports, page 128.
Macnaghten's Persian Hindoo Law, I., 72.

* Perhaps one of the most essential forms in practice is that the adoption should be performed with due publicity, and that notice of it should be given to the Raja. This is not so much for the sake of the validity of the ceremonial, for which it is not necessary, as to disarm opposition and procure the greatest amount of support. There is generally suspicion attaching to adoptions which are not made public at the time. Publicity is a wise safeguard, and prevents the adopter treating lightly the claims of those nearer of kin than the adopted person, and is a check against the hasty and ill-considered choice.

Share of an adopted son with sons subsequently born. Dewanny Reports, III., page 220.

22. The adopted son has all the rights of a posthumous son, and no sale of the property by his adoptive mother, even previous to his adoption, would be valid, except in case of inevitable necessity.*

Duttuk Mimausa, V., 40.

Duttuk Chundrica, V., 17.

When a legitimate son is born subsequent to the adoption, the adopted son inherits one-fourth of the estate; but when two are born, according to the law generally current, the inheritance is divided into five shares, of which the legitimate sons receive four, and so on in the same proportion, whatever number of legitimate sons may be born, the share of each legitimate son being twice that of the adopted son.

Macnaghten's Persian Hindoo Law, I., 70.

Partition of an estate.

23. The law regarding the share of an adopted son being less than that of an own son appears to be an exception to the rule of an equal partition of the property among the sons, which is in accordance with both the law and practice of the Hindoos in all cases where large landed estates are not the object of inheritance.†

Superior claim of elder brother.

24. The superior claim of the elder brother is, however, acknowledged in all the older books of law. In *Menu* it is said—"The elder brother may take entire possession of the patrimony, and the others may live under him, as they lived under their father." And again, "the seniority ordained by law is according to birth." By Yajunyamlhya it is said that the eldest son should receive the largest share. This statement the commentator upholds from various quotations from ancient authors, but he adds that, being contrary to the practice and approval of the world, it ought not to be followed.

Menu, IX., 105.

Menu, IX., 125.

Guardianship.

25. Minority continues till the completion of sixteen years of age; yet this is made subject to exceptions when the heir does not evince sufficient capacity to superintend his affairs, and in the event of his exhibiting great precociousness, he may be raised to his majority even before the appointed time. According to the doctrine in Bengal, the end of 15 years is the limit of minority; by the Regulations of Government it is held to extend to the end of the eighteenth year.

Yajnvulkya Mitakshera, Chapter II., 50.

Macnaghten's Persian Hindoo Law, I., 113.

Sec. Reg. XXVI., 1793.

Nearest relation to be guardian.

26. The nearest relation is held to be the proper guardian of the minor on the demise of his father. First the mother, who, however, can never act independently, but is under her husband's control during his life-time, and on his death under that of his relations; on her death the elder brother, or in the event of there being no elder brother, the paternal relations in their respective order, and after them the maternal relations in their order. The Government, however, has the general supervision of the property of minors, and is authorized to interfere whenever an abuse of

Yajnvulkya Mitakshera, Chapter II., 130.

Menu, IX., 2.

Menu, IX., 108.

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* In Rajpootana, when a legitimate son is born subsequent to an adoption, the custom is, that the legitimate son succeeds to the estate, the adopted son taking a younger son's share, supposing no agreement has been made at the time of adoption. There is no fixed limit as to the amount of the share pertaining to a younger son. It depends entirely upon the custom in the family, and varies in each estate.

† An equal partition of property amongst the sons of a father was the original law, even in case of large landed estates, and in some parts of Rajpootana the custom still prevails. In Shekhawuttee and in Mullanee the largest estates are equally divided amongst all the sons, however numerous they may be. Questions of partition of property occasionally give rise to the most violent disputes in both these divisions of the country.

trust is apprehended. In a sloke of the Santi Purbah of the Mahabharut quoted in the Paruswee, minors, the sick and those who have taken Surna, are introduced as especial objects for the protection of the Raja. The person entrusted with the management of the property of a minor is held responsible for any waste or unnecessary expenses.

27. In case of necessity only can a man dispose of his land or other immovable property inherited from his ancestors; the trustee is, of course, bound by the same restrictions. No claim, however, can be entertained against a minor for his father's debts until he comes of age, when he is bound to discharge them if they are lawful debts. He must pay interest for money lent until it equals the principal, beyond which he is not liable. For grain, clothes, and ghee he is liable to three, four, and eight times the amount respectively in interest.

Obligations of trustee in regard to land and immovable property.

Yajnvulkya Mitakshera, Chapter II., 109.

Yajnvulkya Mitakshera, Chapter II., 39.

CHAPTER II.

Practice of adoption.

It will be observed that much difference exists between the law of adoption, as collected from books of the highest authority among the Hindoos, and the customs actually prevalent throughout Rajwarra. This difference may be attributed in some measure to the law of primogeniture * which prevails in all the Sovereignties and Chiefships of Rajwarra, and in part to Sovereigns and principal Chiefs, having sometimes set aside the law to serve their own interests,† and thus establish precedents for like cases in after ages, and in part also to the books from which I have drawn my account not being consulted in Rajwarra, or written by persons who were conversant with the state of things there. I have heard it remarked that, although with regard to the manner in which particular ceremonies should be observed, the Rajpoots always made a practice of consulting the Pundits,‡ yet in more important matters, such as adoption, &c., they seldom

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* The question arises, how did the Law of Primogeniture gain such a footing as to upset the law of the Shasters? It might arise partly from the parents favouring the eldest son, partly from the Hindoo Law itself making the younger sons respect the eldest son, and also from the latter being of a more mature age so as to be able to assert his rights by force over the younger ones.

† This same power of resisting injustice by force of arms would have constantly prevented those who, under the shield of the law, desired to perpetrate wrong from following the bent of their inclinations, when possibly such would have involved in destruction the very object of their favour. A custom therefore would naturally have arisen of first obtaining the consent of all the relations, and especially of any who might feel themselves aggrieved, before carrying out an adoption, and this is the custom which we now see existing. Since adoption during life has always been rare, in comparison with adoptions after death, these causes would exert a still greater influence in preventing an unjust selection. The Sovereigns and great Nobles have been guided by the same motives in making their adoptions as the lesser Thakoors, and though occasionally the law, local custom, and opinions of relatives and subjects have been alike set at defiance to accomplish some iniquitous end, yet such instances are too exceptional and marked to form the basis of any rule or for us to take them as precedents.

‡ The Pundits in Rajpootana, who are attached to the families of the landed aristocracy, are iguorant of the law, illiterate, and dependent on the heads of

asked their advice, but always looked to the "rewaj," the custom of their caste, for the settlement of any point in dispute; and I imagine that precedents in any of the great families in Rajwarra would be considered as possessing far higher authority than the written law, and that, from enquiries properly conducted, all the present practices might be explained on such precedent, and a system deduced from them which would be applicable to every case which might arise. With the view of ascertaining what books were usually consulted on the subject of adoption, I made enquiries for all the books relating to it that were to be obtained at Ajmere, and only succeeded in finding copies of *Menu*, of the *Mitakshera*, of *Yajuvulkya*, and of the *Vyuvahara Myookh*. The Pundits told me that they did not believe a copy of the *Duttuk Chundrica* or *Duttuk Mimausa* was to be found in Rajwarra, except, perhaps, in the Library at Kishengurh, where Bird Singh, a former Raja, having a literary turn, had collected a great many books, having sent to Benares and other places of repute for them.

The following account of the practice of adoption is taken principally from replies received from Oodeypore, from the Rawul of Jeypore, and from the Rajas of Pertabghur and Doongurpore. Where these separate sources coincide in opinion, I have not particularized them, but where they disagree, I have endeavoured to represent the point in its true light with full particulars.

Different kinds of sons.

2. I have not been able to discover that any of the sons mentioned in *Menu*, with the exception of the legitimately born son and the adopted son, are recognized under their proper names in Rajwarra. Of the Karttrim form of adoption, prevalent in Mithela, there is certainly no trace, and with regard to the Kreetpootr, or son bought, though the practice of buying a son is prevalent in all castes, yet still he is not recognized as such, but is called a Duttuk,* or son given, and the transaction connected with his purchase is not made public. Purchase is generally had recourse to by a man in good circumstances who is childless, and cannot get any one who is his equal in wealth to bestow a son on him; he then takes the son of a poor man and pays the father a sum of money for parting with him. Such a transaction, however, is undoubtedly accounted disgraceful, and hence the attempt of concealing it. If a man, who has either bought or sold a son, has a quarrel with his neighbour, he is sure to be reproached for it, and to have the circumstance brought up against him with a view of bringing him to shame or silence.

3. There are, however, a class of sons for whom no provision is made by *Menu*, but who exercise a wider influence than any of those mentioned

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houses for their subsistence, never leaving their villages and having no access or connection with any of the great schools of Hindoo learning, and being guided by the same feelings and prejudices as those among whom they live, their voice in any disputed succession is given, not according to Hindoo Law, but according to their own feelings and the wishes of the family which they serve. Thus, custom and tradition have greater weight than the written law, whilst precedents to justify injustice and wrong can be produced if required by a priestly sycophant.

* No such custom prevails in Rajpootana. When children used to be purchased, they entered the family as slaves, and though sometimes treated with great confidence and as members of the family, they had no rights of any kind, except for food and clothing, and were never called "sons."

by him. These are the illegitimate sons of the Rajas and Thakoors and their descendants, called "Khuwas-ke-beta." They cannot, of course, marry with legitimately born Rajpoots, but they preserve their race by intermarriages, and their name descends to their posterity, who are not themselves "sons of Khuwas," but only far-off descendants. The Rajpoots are in general as particular about preserving their blood from admixture with that of other races as most of the castes in India, but there is a tribe in the desert, called the Soda Rajpoots,* who pay so little deference to the general feeling, that they give their daughters in marriage to Mussulmans. Though these "sons of Khuwas" are in many places very numerous, and often in possession of a considerable quantity of land, they are not, I believe, considered to have any legal right to it, but merely retain possession on sufferance, and may be ousted at any moment by the proprietor within the limits of whose estate their lands are situated.† The affection of a father often confers on them a large portion of the estate, but they are seldom allowed to keep it long; little remains to them after one or two generations, and many of them lose their separate existence in the name and office of common golams or household slaves. In Marwar the seven illegitimate sons of the late Maharaja Maun Singh ‡ had possessed about twenty-five or thirty villages; some of these were confiscated by the present Maharaja, and the remainder apportioned equally among the sons. Previous to this period, there is only one village in the whole of the country in the possession of the descendants of a son of this description, which belongs to Bucktawur Singh, § who is sprung from an illegitimate son of Ajeet Singh. Ajeet Singh reigned at Jodhpore seven generations ago. In Meywar the

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* The Sodas do not, as a rule, give their daughters to Mahomedans. It does occasionally occur, however, since all the races living in the desert, as do the Sodas, are separated from priestly influences which attach themselves to the course, and are consequently rather loose in their religious opinions. In A.D. 1853 I found that the Soorawa Thakoor on the southern border of Marwar had married his daughter to the Nawab of Radhanpore. This was resented by others of the clan, but it shows that in the country districts there is a greater laxity of religious feeling and freedom from prejudice than we might have expected.

† The sons of a Sovereign by a "Khuwas" receive a small landed estate on the death of their father. They are never ousted, and their posterity continue to enjoy either the whole or some portion of the estate suitable to their position. The sons of a Jagheerdar by a Khuwas are hardly treated so well. They may sometimes have some little land given them, to which they are supposed to have a claim for three generations; but their retention of it depends very much on the marriages they make. If they marry the natural children of Thakoors of equal or superior rank, consideration is shown to them; but if they take a slave girl of the family in which they were born to their homes, they fall quickly into the class of golams or slaves.

‡ The illegitimate sons of Maharaja Maun Singh hold their estates to this day, and which have never been confiscated. They each received estates valued at Rupees 12,000. They are called Babas, and have the title of Rao Raja. The estates they hold are larger than what they would have received had Maharaja Maun Singh had any legitimate offsprings. Three have died out of seven; of these the widow of Baba Suroop Singh has adopted Baba Jowan Singh, a natural son of Maharaja Tukht Singh, who has received two-thirds of his adoptive father's estate. The son of Baba Suggun Singh has succeeded to his father's whole estate, and the succession in the case of Baba Raj Singh, deceased, is not yet settled.

§ Kishore Singh, the natural son of Maharaja Ajeet Singh, obtained Rajgurh near Ajmere. He again had no legitimate children, but his natural son was granted Jhulwanna in Marwar, Rajgurh being resumed. The Thakoors of Patodee and Sayee in Marwar, who are by good rights chakurs of the Raj, have, on the other hand, through lapse of time, raised themselves to be received as pure Rajpoots, excepting by a few of the highest families.

"Khuwas-ke-beta" have more extensive possessions. The cause of the late disturbance in Shekhawuttee was the resumption of a great part of the lands held by the illegitimate brothers of the present Rao Raja of Seekur. Their father had made over to them villages yielding a revenue of fifty thousand rupees per annum; but after his death it was decided by the Court of Jeypore that they should be allowed an income of Rupees 5,000 annually, and that certain villages should be set apart for them, but that the remainder should be re-attached to Seekur. They refused to accede to this arrangement and took to plundering the country, by which they forfeited all claim to benefiting by it. They were prevented doing much harm in the Jeypore territory by Major Ludlow's effective Police arrangements, and were finally taken prisoners in Marwar by Lieutenant Mason. The present subject calls to mind the measures of Government on the demise of the late Rao Raja of Ulwur. His illegitimate son, Bulwunt Singh, was invested with the Pergunnah of Tijara, yielding an annual revenue of about four lakhs of rupees, which was also guaranteed to the heirs male of his body, but he was not permitted to adopt a son. The Raja died without issue, and the estate has now lapsed to Ulwur; but I imagine that however the peculiar circumstances of the case might have rendered it expedient for the Government to interfere and make some provision for Bulwunt Singh, yet the further arrangement regarding the succession was contrary to the customs of Rajwarra, both as making a permanent provision for the descendants of an illegitimate son, as well as drawing a distinction between an own and an adopted son.

Qualification of the adopter. Of the blind, lame, outcastes, &c.

4. The right of adoption rests on the non-existence of a son, grandson, &c.: one who is blind or lame, or an imbecile, or insane,* or with any great mental or corporeal imperfection, cannot be adopted. An outcaste is also excluded, but he can live in his father's name and be called the son of such a one. With regard to him, the Rawul of Jeypore remarks, that while he remains an outcaste, he can neither adopt nor be given in adoption; but if his offence is not of a nature to exclude him for ever from his caste, he can after admission regain all his former rights. And his having been once an outcaste will be no bar to his adoption. The Rawul goes on to observe with regard to the necessity for adoption, that if a man has only one son who is blind or lame,† that son can succeed; an adoption cannot take place to exclude him from inheritance: but if a man has a younger son who is free from infirmities, that son will succeed in preference to his elder brother, though the latter must have a provision made for him, just as the younger would have if his elder brother had succeeded to the estate. If the elder infirm brother has a son who does not partake of

* The elder brother of the present Rawul of Doongurpore was not adopted, because he was pitted with small-pox. This was regarded as carrying the right of exclusion for physical defects to too great an extreme. If he had been a legitimate son, he would not have been passed over, but when a choice is open, as in the case of adoption, a youth without blemish and free from defects of any kind is naturally sought.

† The eldest legitimate son would succeed whatever physical infirmity he might have. If he were of weak intellect, he would still succeed, but the younger son would manage the estate in his elder brother's name.

his father's infirmities, that son has a priority of right, and the younger brother would then be excluded; but if a son is born to the elder brother after the younger has succeeded to the estate, the latter cannot then be excluded.

Right of the husband.

4. A person desirous of receiving another in adoption should consult with his wife on the subject and endeavour to make the selection agreeable to both; the wife, however, has no right to make any objection, because she is under the authority of her husband in all things.

Adoption by widows.

5. A woman may adopt after her husband's death, having previously received his consent; and in this case it is observed by the Rawul of Jeypore that the person destined for adoption even before the ceremony has been gone through should perform the customary exequial rites * and the widow should recognize him as her son, or, if he is too young to perform these rites himself, the Purohit should undertake them in his name. If the husband dies without signifying his wishes regarding the person to be selected as his heir, his widow must consult his relations, and adopt an heir with their consent; and in this case, it is remarked in the paper I received from Oodeypore, that the feudal superior of the estate should also be consulted,† and he has a right to object in the event of his being satisfied that the person sought in adoption is disqualified from want of capacity or other causes, and in that case he will nominate some other person, and his nominee must be received, otherwise he will give his sanction to the choice of the widow and relations of the deceased. The Rawul of Jeypore makes no mention of the interference of a superior authority, but merely observes that, if the husband should have died without signifying his wishes with regard to his heir either in writing or before competent witnesses, his wife must consult with his relations and can adopt whom she pleases after obtaining their consent. In the case that was lately decided regarding the Ahmednuggur succession, the right of the widow to adopt seems to have been set aside. The Governor-General had doubtless valid reasons to support the

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* In States it is usual for the Purohit to perform the exequial rites in the name of the son or adopted son, and not the successor to the throne himself, as this would interfere with the performance of his duties of Sovereign.

† The degree of interference which can be exercised by the feudal superior is a point of great contention, in Meywar especially. It was claimed on the part of the Maharana in the paper obtained by Mr. Brandreth from Oodeypore, whilst the "Rawul," who was the Minister and a feudatory of Jeypore at the time, did not allude to it in the information he furnished. When feudatories are on terms with their Suzerains, we hear no complaints. They adopt whom they please and the Sovereign accepts the adoption, and after settling the amount of succession fee invests the adopted according to custom. It is only in cases of some personal feeling, or other cause leading to an improper adoption, that interference is exercised by the Sovereign. It is then done with much forbearance and in a friendly spirit to prevent the chance of a family feud and the ruin of the property.

This is the ideal of Hindoo Law. It supposes the Sovereign to have no human infirmities, and no jealousies, and to seek only the good of his subjects. The claim to interference in adoption is seldom or never heard of at Jeypore or Jodhpore. When it arises, even at Oodeypore, it practically ends by the Durbar agreeing to the adoption on payment by the feudatory of a somewhat heavier fine or relief. This was the mode of settlement in the case of the Deogurh Chieftainship mentioned in *Tod*, Vol. I., p. 191, where the vassals say that they gave a son to the deceased Rao, not a Chief to Deogurh. This kind of settlement has been also adopted in the succession of the Saloombur Chief, the most powerful feudatory in Meywar.

decision at which he arrived to make over Ahmednuggur to Edur,* and not being acquainted with them or with the arguments adduced by the Edur people in whose favour the decision was given, it may seem somewhat out of place in me to allude to it, but the case, as represented by the people of this part of the country, bears an aspect so different to what might have been expected from the decision of the Governor-General, that I cannot forbear mentioning it. The States of Edur and Ahmednuggur have never been united; they came into the possession of the families who lately held them in the time of Ajeet Singh, the Raja of Marwar, who died in 1781; two of his sons acquired them, of whom the elder succeeded to Edur, and the younger got possession of Ahmednuggur. Pirthee Singh, the late Raja of Ahmednuggur, was the descendant of this younger son, and the elder brother of Tukht Singh, the present Raja of Marwar. He died without issue, and after his death it remained with his widow, according to the custom of Rajpoots, to provide for the succession by adoption. It is asserted that she adopted Juswunt Singh, the eldest, and at that time the only son of Tukht Singh, who afterwards became Raja of Marwar. The Edur people, I believe, dispute the adoption ever having taken place, and if it had, it might be a question whether Juswunt Singh, the eldest son of the Raja of Marwar, could forfeit his birthright by retaining possession of a petty State like Ahmednuggur; but if the adoption had not taken place, or if it had been rendered invalid on the above ground, it would evidently rest with the widow of Pirthee Singh, with the advice of her husband's relations, of whom Tukht Singh would be the chief, to adopt either one of the younger sons of Tukht Singh or whomever else she pleased, provided she had their consent. It would not appear from this narration what claim Edur could set up for Ahmednuggur.

Obedience of wives.

6. The case instanced in the first chapter from the Sudder Dewanny Reports, regarding two widows each adopting a son, cannot be considered applicable to the Rajpoot Chiefs in consequence of the law of progeniture

* Mr. Brandreth was misinformed regarding the Ahmednuggur succession. Maharaja Tukht Singh had been adopted by the widow of his brother Pirthee Singh, and was Raja of Ahmednuggur when chosen for the Jodhpore throne. He had then only one son, Jeswunt Singh, a child, whom he might have left as Raja of Ahmednuggur. He was anxious, however, that the child should succeed at Jodhpore, and the infant's mother was equally anxious that the greater throne should descend to her son, and which also secured her own position as "Pat" Ranee, or chief Ranee, which she might have lost had Jeswunt Singh been left at Ahmednuggur and had another son been born to her husband by another Ranee. Maharaja Tukht Singh hoped to keep both thrones for himself, or to send his second son to Ahmednuggur in case he had another. He persistently delayed replying to the communications from the Bombay Government, who required that Jeswunt Singh should be sent, as he alone could have any right to Ahmednuggur. As this was not done after ample time being allowed, the Ahmednuggur throne was declared vacant, and as Pirthee Singh's widow could not possibly have the right of adoption whilst Maharaja Tukht Singh had a son alive, the Bombay Government regarded it as a lapse, and accordingly bestowed it upon the Edur Raja, who had been passed over by the Jodhpore deputation in favour of Tukht Singh. The lamp of Ahmednuggur was extinguished thereby, according to Hindoo Law, but the blame of this should rest with Maharaja Tukht Singh, and not with the Bombay Government. The latter were, it is true, anxious to make amends, as far as they could, for the injustice done by the Jodhpore deputation to the young Raja of Edur, who was their ward, in passing him over in favour of the younger branch of Ahmednuggur. It should be observed that Maharaja Tukht Singh's second son had not been born when these occurrences took place, and that there was no nearer branch than Edur to the Ahmednuggur family.

that prevails among them: no partition of the estate could take place, and no second adoption, under the circumstances there described, would be allowed.

Power of adoption of eldest widow.

7. If a man dies leaving more than one widow, the eldest has the preference, and she alone has the power of adoption, though it is better for the reputation of all that the younger widow or widows should be consulted and signify their assent. Their assent, however, is not essential. This distinction between an elder and a younger wife holds good, whatever claim on account of superior descent the latter may have, though she were a daughter of the Rana of Oodeypore* and the first wife plain "Bhutyanee jee." The eldest wife of a Raja is called the "burree Ranee;" but it does not follow that her eldest son will be heir to the throne: the first born son of any wife is the legal heir; and on his birth his mother, whatever place she may hold among the wives, takes the title of "Patranee." This title is not conferred by seniority in marriage, as stated by Tod (*Rajasthan*, Vol. II., page 380). The word "pat" signifies the throne, and the Ranee cannot prefix it to her name until she gives birth to an heir for the "pat." The child is called the Pat-koonwur.

Preference of a near relation.

8. It may be considered a duty, though not an indispensable one, that the adopted should be selected from the near relations of the husband, though, in the event of such near relation not being considered a desirable person, or of the adopter's not entertaining a proper degree of affection for him, a child may be sought among more distant relations.

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* The succession of a son by an Oodeypore Princess, in preference to an elder son by another Ranee, may possibly be brought forward hereafter for authoritative decision. At the commencement of the last century the Jeypore and Jodhpore Courts, when renewing with Oodeypore the tripartite Treaty against the encroachments of the Imperial Power, agreed, if they were again allowed the privilege of marrying with the Oodeypore family, which had been forfeited by sending their daughters to the Imperial Harem, that on occasion of alliances between them and Oodeypore, any sons born to the Oodeypore Princess were to succeed to the throne in those States to the prejudice of elder sons by other wives. The first, and as yet only attempt to carry out this agreement was in the case of Madho Singh, born to Maharaja Sewae Jey Singh of Jeypore by an Oodeypore Princess, who was supported by the Maharana of Oodeypore in his pretensions to the throne against his elder brother Eesree Singh, which brought a calamitous war on both States. No other marriage of the kind has since taken place, and the settlement of the question by us is therefore in abeyance.

† The adoption of the "next-of-kin" is not absolutely necessary; but failing the "next-of-kin," the adoption should be from the "nearest of kin," and in settlement of questions of adoption amongst Rajpoots, the nearness of relationship to the deceased is a question of the first importance. A reasonable latitude is allowed, but a choice is seldom made from distant branches when near ones are available. The genealogical tree of any family will readily show this. When the nearest of kin is not selected, his consent in case of near relationship is sought to his own exclusion, and some pains are taken to obtain it by making him a grant as compensation for his loss. Every Rajpoot has a claim on the inheritance left by the founder of his family, who carved out the estate for his posterity, and no one, not descended from the founder, can participate in it. Thus, in every case the restrictions on adoption are pretty well marked, and in a clan the origin of which may be ancient there may be many such families branching off at different periods, each bearing the name of the founder to which they owe their origin and who achieved distinction or acquired estates: marking thus by distinct lines the circles from which selection is made, sometimes the owner of an estate, having many sons, will mark a resting point in the genealogical tree, from the progeny of whom a selection can be made. The cases of the adoption of the Pertabghur Raja to Doongurpore, and of the son of the Thakoor of Lamha to Bandurwarra, referred to in the Kerowlee succession papers, were the result of intrigues, and are to be regarded as exceptions to the general rule and against law and custom, and not as precedents to be followed.

Exceptions.

9. After the death of Juggut Singh, Raja of Jeypore, his widow did not select a son from the descendants of Bharmul, but adopted a son of the Raja of Nurwar, by name Maun Singh,* who was descended from a common father more than 14 generations back. Another case, which exhibits also the entire independence of the husband in the choice of a son, is given as follows:—"In the pergunnah of Bhinae the Raja of Bandurwarra, against the wishes of relations, rejected a son of the Jodahs who was a near relation, and adopted one of the family of Jugmala, the son of the Thakoor of Lamha.

10. In the different States of Rajwarra there are certain families from which, on the failure of issue, it is generally considered that the adoption ought to take place, as at Marwar from the descendants of Ajeet Singh;† at Oodeypore from the Ranawuts, or rather that branch of them resident at Bagore; at Kotah from the descendants of Bishun Singh, resident at Polaeeta; at Jeypore from the Maunsinghot, or descendants of Maun Singh. At Boondee there have been no adoptions out of the direct line. The term "bhaee-beta"‡ is applied to those related to the reigning Prince within four or five generations; those more distantly related are denominated Oomraos. The former have certain privileges which are not extended to the Oomraos, such as of entering the Raja's harem, of eating out of the same dish, and of dismounting from their horses at the same time with the Raja.

Party adopted.

11. It is not usual for an only or an eldest son to be given in adoption, but when it is for his advantage, as his thereby becoming heir to a larger estate than his paternal one, it is allowable. From all that I have been able to collect on the subject, it does not appear that any of the restrictions required by the Shasters regarding the adoption of a brother or a paternal uncle are attended to in Rajwarra; examples will be adduced. On this subject the Rawul of Jeypore writes:—"Among the Mahrattas a sister's son

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* This is not a case in point. The nomination of Mohun Singh of Marwar (whose name was changed to Maun Singh) to succeed Maharaja Juggut Singh, was an intrigue for power on the part of Nazir Mohun Ram, the head eunuch in the zenanah at Jeypore. With the exception of the turbulent Thakoor of Diggee, the Thakoors prepared to oppose the nomination, and to raise the standard of rebellion, when fortunately one of the Ranees of the late Raja declared her pregnancy. A great assembly of Thakoors took place at the palace. Their wives were sent into the zenanah to certify to the Ranee's pregnancy. On being assured of this by their wives, those present bound themselves to acknowledge the offspring, in case a male child were born, as the Sovereign of Jeypore. Juggut Singh III. was brought into the world in due time, and Mohun Singh was cast out without provision, and a few years afterwards died at Gwalior.

† This sentence is apt to mislead. The restrictions to choice in cases of adoption in great families have been already referred to and explained. When members of one branch are exhausted, then a wider choice is open from among the collateral branches. As Maharaja Ajeet Singh had several sons, more distant branches of the family would not be resorted to for the choice of a boy for adoption till the progeny of Maharaja Ajeet Singh had been exhausted. The present Maharaja Tukht Singh, who has also several sons, will form another starting point in the genealogical tree, from among whose descendants, a few generations hence, choice will be sought, and then the branches starting from Maharaja Ajeet Singh will be still further removed, and it will not be necessary to go back to them. At Oodeypore, in the same way choice would be made from the nearest branches of the Royal family. Bagore is the nearest of all. The Ranawuts are descended from former Ranas, and are now so numerous as to form a clan of themselves.

‡ The term "bhaee-beta" is applied to near relations, but these would not be distinguished by such privileges as supposed, nor would they enter the Royal

or a daughter's son may be received in adoption, but this custom does not prevail in Rajwarra, nor would it be considered lawful to adopt from another 'goti.'" A Kuchawa, for instance, could not adopt a Seesodia, a Bhatee or a Hara, nor, *vice versâ*, any of these a Kuchawa, and although it is contrary to the Shasters for one whose generation is nearer the common ancestor to be received in adoption by one whose generation is further off, as for one in the fourth generation to be adopted by one in the fifth, yet this custom prevails in Rajwarra, an example of which is afforded in the present Raja of Kishengurh.

12. Bahadoor Singh, a former Raja of Kishengurh, had two sons, Bird Singh and Bagh Singh; the elder, Bird Singh, succeeded, and to him succeeded his son, Purtab Singh, to Purtab Singh, Kullyan Singh, and to Kullyan Singh, Mohkum Singh. Mohkum Singh was therefore the fourth in descent from Bahadoor Singh. He died without leaving an heir to the throne. His widow, a Seesodince and daughter of the house of Oodeypore, with the assent of most of the Chiefs of the State, adopted Pirthee Singh, who was the grandson of Bagh Singh, the second son of Bahadoor Singh, from whom he was therefore third in descent, and thus in his generation stood in the relationship of uncle to his predecessor, the late Raja Mohkum Singh. The adoption of Pirthee Singh was not, however, incontested. Bhopal Singh, the Chief of Futtehgurh, a dependency of Kishengurh, who belonged to the elder branch of the family of Bagh Singh, set up a claim to the succession. Bagh Singh had two sons, the elder Chand Singh, the younger Bheem Singh. Pirthee Singh, the adopted son of the Ranee, was the son of the latter; and Bhopal Singh, who contested her choice, the son of the elder brother, Chand Singh. All the Chiefs of the State were consulted on the occasion, and they gave it as their opinion that the adoption ought to be made from the Bahadoorsinghot, that is, from the descendants of Bahadoor Singh; and that, provided this was the case, there might be a latitude in the choice, which need not be restricted to the elder branch. Colonel Sutherland, to whom the case was referred by the Ranee on the one side and the Chief of Futtehgurh on the other, after taking the opinion of the Chiefs, consulted also Maun Singh, the Maharaja of Jodhpore, in whose judgment he had great confidence, and who was looked up to by all Rajpoots for his knowledge of the customs and precedents of caste. His voice supported the decision of the Ranee and Chiefs; and finally, the adoption received the sanction of the British Government. It may be observed that Pirthee Singh was the fifth son of Bheem Singh, so

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Harem, or eat out of the same dish as the Raja, and only sons would dismount at the same place as the Raja, whose position as Sovereign is preserved in a most scrupulous manner. "Oomrao" is a term applied to Nobles generally, who may be either collateral branches of the Royal family, or of other clans than the Royal clan.

An elder brother could not be adopted by a younger, nor could a real uncle be chosen, who is looked up to almost in the light of a father. There is not the same objection when the uncle is removed beyond three generations, the difference of length in the generations being a matter of mere accident, and though the relationship may be styled "uncle," yet it is not regarded in the same light as an own uncle. Moreover, the one to be adopted may be a child, when there would be still less objection to his being chosen.

that, besides Bhopal Singh and his sons who were of the elder branch, Bheem Singh's four elder sons were also rejected. This shows how great a latitude was extended to the choice.

Adoption of a brother allowed.

13. The adoption of a brother has in no less degree received the sanction of custom than that of an uncle. The present Rana of Oodeypore, Surroop Singh, was adopted by his own brother, the late Rana Sirdar Singh,* and what is more remarkable about this case is, that Sirdar Singh had another brother, named Sheer Singh, older than Surroop Singh. It was generally supposed that Sheer Singh's eldest son would succeed to the "guddee" on the Rana's death, but the Rana preferred his younger brother and formally adopted him, setting aside both his second brother and that brother's children in his favour. The present Rana, however, did not seem to have full confidence in his position, but was very jealous of Sheer Singh's son, Sadool Singh, whom he kept in confinement, where he died after being incarcerated for about two years. Whispers are afloat that his death was brought about by some underhand means. He was a young man of considerable energy, and was in general very popular. His widow, who was ardently attached to him, became a suttee on his death.

Adoption of an eldest son sometimes allowable.

14. The adoption of an only or an eldest son is allowable where the adoption is for his advantage. If the estate to which he is naturally heir is a small one, and the owner of a larger estate wishes to adopt him, he can do so. Such a course has the sanction of many precedents; among these the case of the late Rana of Oodeypore, Sirdar Singh, may be mentioned; he was an eldest son, and on his adoption resigned his patrimony of Bagore to his younger brother.

Adoption of an eldest son when not allowable.

15. On the other hand, it is very certain that it is contrary to the custom of the Rajpoots for the heir of a large estate to be transferred by adoption to a smaller. A case in point was lately decided by the Superintendent of Ajmere. After the death of Tukht Singh, the Thakoor of Koda, his widow adopted, or was supposed to have adopted, the only son, a minor, of the Thakoor of Para, the Chief of a much larger estate. The widow about three years after the death of her husband asserted that she never had adopted the Thakoor of Para's son; that such an adoption could not be valid among Rajpoots; and she petitioned that the Thakoor might be kept from exercising any control over her estate. The point to be decided here was, whether an adoption taking place under the circumstances described would be valid or not. The necessity for enquiring whether the adoption actually had taken place depended upon whether this point was decided in the negative or in the affirmative. A reply was called for from some of the principal States in Rajwarra, from Oodeypore, Shahpoorah, Kishengurh, Kotah, and Jhallawar, and was returned unanimously to the effect

* Maharana Sirdar Singh passed over his brother Sheer Singh, because on the death of the previous Maharana Jowan Singh, Sheer Singh had intrigued with the zenanah faction to procure the adoption of his own son Sadool Singh. On Sirdar Singh determining to make an adoption therefore, he naturally preferred his youngest brother Suroop Singh, whom he adopted during life-time to one who had endeavoured to supplant him.

that the heir of a large estate could not succeed by adoption to a small one. All the principal Thakoors of the district of Ajmere were also summoned to Ajmere to give their opinion on the question; nearly the whole of them stated that it was contrary to the custom of their caste for the eldest son of the Thakoor of a large estate to be transferred by adoption to a small one, and that no adoption under these circumstances would be valid. This conclusion was founded on the consideration that no such adoption ever had taken place to their knowledge, and that the Thakoor of Para could not disinherit his son and deprive him of his right of succeeding to Para, as after his transfer to Koda he could not inherit his own father's estate. This is in accordance with the Hindoo Law as observed all over India, that an adopted son loses all claim to inheritance in his natural family. The three or four dissentient voices among the Thakoors, who in all probability were influenced by personal motives, agreed with the majority that there was no precedent for the present case, but asserted that the adoption once having taken place could not be annulled. The Superintendent adopted the opinion of the majority and decreed in favour of the Thakooranee of Koda, and left her at liberty to adopt whom she pleased.

Adoption sometimes annullable.

16. Adoption, though in general a permanent relation, is sometimes annullable, as in the case of the death of an elder son, when the younger who has succeeded by adoption to a small estate thus becomes heir to a larger one. An instance of this occurred not very long ago. The Thakoor of Koochawun * in Marwar gave his second son in adoption to the widow of the Thakoor of Pulara, after which his eldest son died, and though he had two other sons, he recalled the son whom he had given in adoption, and who had now become the eldest, to Koochawun, by which he has lost his title to Pulara, but will eventually succeed to Koochawun.

Age of the adopter.

17. There is no restriction regarding the age of the adopter, but a man should not seek a son in adoption until he is passed the hope of begetting one, though there is no positive rule on this head.

Age of the adopted.

18. A person is not debarred from being received in consequence of age or marriage, neither is there any restriction on account of tonsure or investiture with the sacred thread. With regard to age, the Rawul observes that "when a son has arrived at years of maturity, if he were unwilling to become the subject of adoption, the case would be involved in some difficulty. However, according to the Shasters, a son is bound to obey his parents, and should not dispute their will; yet it would certainly be better for them to obtain his consent." We may conclude, however, that such a case as this is not very likely to occur, adoption being always for the advantage of a man; he would not be inclined to reject the benefit to be derived from it, though, if he were so inclined, it may be doubted whether his adoption

* The son, Kesree Singh, here referred to, succeeded to the Koochawun estate, but has kept Pulara also. This is contrary to Hindoo Law, and would have been the same as if Maharaja Tukht Singh had retained Ahmednuggur after his adoption to Jodhpore. This shows how the law can be over-ridden in cases where the family is powerful enough to do so.

could be made compulsory. The present Maharaja of Jodhpore * is adduced as an instance of one who was adopted after marriage and after he had arrived at years of maturity; also the Raja of Banswarra adopted a son of mature years, named Bahadur Singh of Jeypore. Sirdar Singh, the late, and Surroop Singh, the present, Maharana of Oodeypore, were both adopted after they became of age and after marriage. There is no use in bringing forward further instances in proof of this custom, which admits of no dispute, and which is, perhaps, more common than the adoption of children of the age required by the Shasters.

Qualification to give in adoption.

19. A husband is not restricted by his wife's consent in the matter of adoption; it is desirable that they should agree in giving as well as in receiving a son in adoption: but when the wife dissents, the husband's authority is supreme, and he can either adopt or bestow his son in spite of any objection she may raise.

Duyamooshayuna form of adoption.

20. The Duyamooshayuna form of adoption is not known in Rajwarra, at least I have not been able to discover any instance of it. Neither the name, nor any of the rites connected with it, are known to any but those who are versed in the Shasters.

Form of adoption.

21. The adoption does not rest upon any particular ceremony, the non-fulfilment of which would invalidate it; the intention of the adopter decides the question: all that is necessary is to prove this; and "when this is established," observes the Rawul, "if after the adopter's death it appears that any of the ceremonies have been neglected, they can be performed at a subsequent period by his widow." When the adopter has decided on his choice, but before the ceremonies are performed, if he should wish to reject him and adopt another, he can do so, but must make some provision for him whom he rejects.

Time within which adoption should take place.

22. The adoption ought to take place within twelve days after the death of the lord of an estate, though this is not absolutely necessary.

Ceremonies at adoption.

23. The customs to be observed in adoption are, presenting the adopted with carrings, clothing, shield, sword, &c., in the assembly of all the relations; and if the adoption takes place after the death of the owner, his turban must be tied on his successor's head. The course generally pursued in effecting an adoption may be described more at length as follows:—"The Chief and his wife having agreed that there is no chance of their having a son fix upon one to adopt, and send for his horoscope, which is shown to the Joushee, who compares it with that of the adopter: if the lunar asterisms under which each was born are found propitious for the relation

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* On the death of the late Maharaja Maun Singh at Jodhpore, the Ranees wished to adopt a child, but the Thakoors firmly objected, on the ground that after the late disturbances it was absolutely necessary that an adult should be placed on the throne. The choice fell on Maharaja Tukht Singh, who had reached man's estate.

In reply to the questions sent to the various Courts in Rajpootana in A.D. 1853 on occasion of the disputed succession at Kerowlee, all the Durbars answered that the age of the adopted was of no consequence.

that is proposed to take place between them, the relations of the family and others are consulted, and if all seems favourable, the parents of the boy are asked if they agree to the measure, and the boy is generally transferred to the family to which he is hereafter to be permanently attached, and resides with them five or six months before the adoption takes place, that they may have an opportunity of judging of his disposition. The Joushee is again consulted as to the propitious time for the ceremony to be performed, and having declared it, notice is given by the Chobdar, who enjoins all to be present, that at such an hour the adoption will take place. Early in the morning the Joushees, Purohits, and other Brahmins meet together at the adopter's house, where they make preparations for the ceremonies of the day. The Chief and his future son then make their appearance, when offerings are made to Gunnesh and Sorusmatree, after which the Nandee Shradh is performed, then offerings to the planets, Brahmun buru, &c. Other ceremonies follow the same as those which take place at the "Jatkurm," purification after birth, adoption being considered in the light of a new birth. The adopter then anoints the underlip of his future son with a mixture of ghee, honey, &c.; both their tiluks are then marked by the Brahmins, and the whole party proceed to the Durbar. The Purohit places the boy in the lap of his adopting father. The Joushee comes forward and marks the tiluk on the boy's forehead, sprinkles the hands of both with consecrated water, and performs the arutee. Presents are given and received, all giving to the Raja, and the Raja giving to his favourites; spirits and opium are distributed to the company; guns are fired off; and the adoption is complete. These ceremonies take place if the Raja is in a condition to go through them; but if he is at the point of death, or too ill to undertake them, all that is necessary is to assemble the relations with the utmost expedition to tell them the Chief's pleasure and enjoin them to observe it; and a paper to the same effect is prepared, to which all persons append their signatures. If the husband dies before the adoption takes place and has left his command to his wife on the subject, after the twelve days of mourning are over, and the monsir, "funeral feast," takes place, the turban, shield, and sword of the deceased are placed on the principal seat, and the relations being assembled, the Joushee and Purohit invest the adopted son with the turban and give the sword and shield into his hands; the relations and subjects then approach and make their salaam and present nuzzurs: this done, all the party go to the mundur, after which the son returns, and, prostrating himself before his adopting mother, touches her feet with his head. The ceremonies observed on the occasion of a succession to the throne, which are distinct from those of the adoption, I have heard described on this wise:—"The new monarch, after being anointed, performs his ablutions with one thousand ghurras of water, which are ordered to be collected from the four oceans, though, in consequence of the restricted dominion of the Hindoos of the present day, it is considered sufficient to collect water from the wells and tanks on the four sides of the capital; to this is added some water from the Gunga and other sacred rivers. If the Sovereign is unable to bear an ablution with the whole of them, a few pitchers are filled with water taken from all the thousand pitchers,

and with these the ablution is performed. The Sovereign then adorns himself in the most magnificent manner and proceeds to the Durbar, when, after the three ceremonies of tiluk, ubhishek, and muntrakshit, the investiture is considered complete. The tiluk is marked by all the privileged persons in succession, the ubhishek is performed by the Joushee, and the muntrakshit, which consists of presenting a few grains of rice to the Raja, who, after applying them to his eyes, places them in his turban, is also performed by the Joushee."

Effects of adoption.

24. The son after adoption cannot inherit in his natural family, nor present offerings to the manes of his natural parents; he is a stranger to his natural family in all respects but marriage,* with regard to which all the prohibitions continue in force.

Distinction regarding inheritance.

25. The distinction regarding inheritance holds good, even after a man has come into actual possession of his paternal estate: if he is adopted into another family, he must resign that estate. When Sirdar Singh, Maharaj of Bagore, became by adoption Maharana of Oodeypore, his paternal estate fell to his younger brother, but there is no need of multiplying instances on a point which is as clearly recognized by custom as it is in accordance with law.

Restrictions as to marriage.

26. With regard to marriage, though the prohibitions extend equally to the natural and acquired families of the adopted son, yet these are so limited, compared with the customs of other castes and with the restrictions imposed by Hindoo Law, that they deserve particular notice. The ordinary rule is that a man may not marry into that *got* or division of caste from which his grandfather† or grandmother, whether onthe father's or mother's side, is sprung, but this is not regarded among the Rajpoots; both grandfathers, fathers, and sons often marry into the same *got*. One or two examples may suffice. Bishen Singh, the late Rao Raja of Boondee, married the sister of Kullyan Singh, the Raja of Kishengurh, who was a Rathor, and his son, Ram Singh, the present Rao Raja, married the daughter of Maun Singh of Marwar of the same *got*. Mohkum Singh, the late Raja of Kishengurh, married the daughter of Umur Singh, a Seesodia, and his adopted son, Pirthee Singh, has been betrothed and will shortly be married to the sister of the Raja of Shahpoora, who is also a Seesodia.

Restrictions broken through.

27. In other ways, too, the restrictions usual among other castes are broken through. It would certainly be contrary to the custom of other castes for a man to marry the sister of his own son-in-law. Yet Maun Singh, the late Raja of Marwar, a man noted for his acquaintance with

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* The prohibition in regard to marriage would be the same in whichever family he is. He cannot be adopted by a family outside his clan, nor can he marry within his clan.

† Any man of one clan or *got* can marry any woman of another clan or *got*. Thus a man can marry two sisters, or a father can marry one sister and his son another, so long as they are of another *got*. Blood relationship is calculated to be on the paternal side only. The female side is mere connexionship. The distinction is obvious and wise.

immemorial customs and for his adherence to them, has himself left us an example of this.* He married his daughter to Juggut Singh, Raja of Jeypoor, and on the same day received in marriage Juggut Singh's sister.

Marriage of Raja's daughters to subjects not usual.

28. It is not usual for Rajas to marry their daughters to subjects, but Oodeypoor is an exception to this rule. The Ranas of Oodeypoor give their daughters in marriage to those who hold lands under them. This custom is said to have originated in the opposition which the Ranas made to sending a daughter to the harems of the Emperors, and they were too much offended at the conduct of the neighbouring Princes of Joudhpoor and Jeypoor in this respect to bestow their daughters on them, as they thought them disgraced and lowered by the alliances they had formed, and they considered it better to marry their daughters to their own subjects than to connect them with those who had so far fallen from their high estate and dishonored the name of Rajpoots.

Share of an adopted son with a son subsequently born.

29. If a legitimate son be born after the adoption has taken place, the adopted must have an adequate maintenance made for him. It is observed in the paper I received from Oodeypoor that "the adopter ought to make an agreement with the parents of the adopted son, such agreement being attested by five respectable witnesses, that he will make a certain provision for him in the event of a legitimate son being afterwards born, who will of course, succeed to the estate; but in the event of an agreement not having been made, the adopted son must be provided for.† The late Thakoor of Burlee, in the district of Ajmere, adopted the brother of the Raja of Bhinae, and entered into a promise to bestow on him a village valued at about a fifteenth part of the whole estate in the event of his having a son. This contingency came to pass; a son was born to the Thakoor, but the adopted son had not yet been put into possession of the village that was guaranteeed him, though the case has been pending for the last twenty-four years in consequence of some difficulty about fixing the jumma to be paid to Government if the village were separated from the rest of the estate.

Partition of an estate.

30. The law of primogeniture, as has been shown, prevails throughout Rajwarra; the eldest son must be considered the heir to the whole estate, nor is this, as has also been shown, opposed to the Shasters. It is true that some provision must be made for younger sons: certain appanages

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* Maharaja Maun Singh, in marrying Juggut Singh's sister, at the same time that he gave him his own daughter, did not marry any one in whom flowed the blood of relationship.

† In estates there are certain lands or villages which are ostensibly the recognized portions of younger sons. Some of these occasionally fall in, or some of the sons are provided for by adoption elsewhere. A prudent Thakoor is always on the look-out for thus providing for his family, so as not to diminish unduly the patrimonial property. The share of a younger son is not fixed, but it is always more than mere food and clothes, excepting during the life of the father. On the father's death, his claim to a portion (though only, perhaps, a few fields) is always allowed.

must be assigned them according to the capability of the estate, but the amount of these depends on the will of the owner, and I do not know that they could claim more than would be sufficient to keep them in food and clothes. It is generally considered that the different States of Rajwarra are now divided into three nearly equal parts,* of which one, called the khalsa, is held by the Sovereign; the second, the jaghire, by his relations, the descendants of the younger sons of former Rajas; and the third by Charuns, Bhats, and Brahmins for religious and charitable purposes. The last division consists of what is called Sansur Ooduk or milk-land, according as it is held by Charuns, Brahmins, or Kayuths and other servants of the Raj. The proprietors of jaghires and Ooduks are, of course, subordinate in all things to the Sovereign: the former are obliged to furnish a certain number of horse for his service, which in some instances is commuted to a money payment, and from the latter exactions are made in times of necessity. At the commencement of the present year of drought, which has been very severely felt at Kishengurh, it was talked of resuming some of the lands held by Brahmins in that State, because, as the lands had been granted them to pray for the prosperity of the country, the present drought was regarded as evidence of their not having properly discharged the duties required of them.

Guardianship.

31. If the adopted be a minor on the death of his adoptive father, his adoptive mother is his proper guardian, and after her the father's relations in their proper order. The Rawul observes that "the most deserving among the relations should be selected, but he must be restrained from usurpation, and can only incur such expenses for his ward as are absolutely necessary."

Debts.

32. The proprietor of an estate is not responsible for the debts of his predecessor until he becomes of age.† The trustee or manager cannot be compelled to make any arrangement for their liquidation. The Raja of Banswarra remarks that "the manager may discharge the debts, and should do so if he has the good of his ward at heart." In my Oodeypoor paper it is observed that "where there are sufficient assets, the debts should be discharged through the management of five relations, aided by a responsible person on the part of the Government, and they can make what arrangement they conceive will be the best for the estate; otherwise the

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* The division of the States in Rajwarra into three equal parts is an ideal division by the Shasters. Actually it is very different. In Meywar the share of the Sovereign is less than one-third, and that of the Brahmins and rent-free tenures considerably more than a third. In Jeypoor the Brahmins have less than a third, whilst in Marwar the feudatories hold two-thirds of the land and the Sovereign not more than an eighth or ninth.

† The minor, who is adopted, cannot be held answerable for the debts of his predecessor till he is of age, nor more can a legitimate son, but the State is answerable, and the debts should be liquidated in the best possible manner. The theory that they may remain over till the minor comes of age could not be but injurious to any State.

heir is not liable for the debts of his father until he comes of age, when the interest payable on them must be determined by his ability to meet the demand."